



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R1-ES-2022-0029; ES11140100000-234-FF01E0000]

Draft Environmental Impact Statement for the Elliott State Research Forest

Habitat Conservation Plan in Coos and Douglas Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; notice of public meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (together, the Services), have received two separate incidental take permit (ITP) applications from the Oregon Department of State Lands (ODSL; applicant), associated with ODSL's Elliott State Research Forest habitat conservation plan (HCP). The applications, including the HCP, have been submitted pursuant to the Endangered Species Act. ODSL is seeking authorization from the Services for the incidental take of three species (two under FWS jurisdiction, and one under NMFS jurisdiction), expected to result from research and management activities on the Elliott State Forest in Coos and Douglas Counties, Oregon. In accordance with the National Environmental Policy Act (NEPA), this notice also announces the availability of a draft environmental impact statement (DEIS). FWS is the lead Federal agency under NEPA, and NMFS is a cooperating agency. We invite public comments on the HCP and DEIS from the public and Federal, Tribal, State, and local governments.

DATES: *Submitting Comments:* We will accept online or hardcopy comments.

Hardcopy comments must be received or postmarked on or before **[INSERT DATE 45**

DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. (See

ADDRESSES.) Comments submitted online at <https://www.regulations.gov/> must be

received by 11:59 p.m. Eastern Time on **[INSERT DATE 45 DAYS AFTER DATE OF**

PUBLICATION IN THE *FEDERAL REGISTER*].

Virtual Public Meeting: FWS will hold a virtual public meeting on December 13, 2022, from 2 to 3:30 p.m. Pacific Time. For more information, see **Public Comments and Virtual Public Meeting** under **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Submitting Comments: You may submit comments by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R1-ES-2022-0029.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS-R1-ES-2022-0029; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post online any personal information that you provide. We request that you submit comments by only the methods above. For additional information about submitting comments, see **Public Comments and Virtual Public Meeting** under **SUPPLEMENTARY INFORMATION**.

Public Meeting: A link and access instructions to the virtual meeting will be posted to <https://www.fws.gov/project/elliott-state-research-forest-habitat-conservation-plan/> at least 1 week prior to the public meeting date.

Reviewing U.S. Environmental Protection Agency (EPA) Comments on the Draft HCP and DEIS: See **EPA's Role in the EIS Process** under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shauna Everett, by telephone at 503-231-6949, or by email at shauna_everett@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD,

or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (FWS), have prepared a draft environmental impact statement (DEIS) pursuant to the requirements of the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate applications for incidental take permits (ITPs) received on October 10, 2022, from the Oregon Department of State Lands (ODSL; applicant). ODSL submitted two applications, one for two species under FWS jurisdiction, and the second application for one species under National Marine Fisheries Service (NMFS) jurisdiction. NMFS is a cooperating agency under NEPA. In support of the ITP applications, the ODSL prepared the draft Elliott State Research Forest Habitat Conservation Plan (ESRF HCP), which, among other components, specifies the impacts that will likely result from the take of covered species, describes the steps the applicant will take to avoid, minimize, and mitigate such impacts, and explains the funding available to implement such steps.

Background

Section 9 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) prohibits “take” of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by FWS regulations as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential

behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3; see 50 CFR 222.102 for NMFS regulations).

Under section 10(a) of the ESA, the Services may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that FWS (or NMFS) may require as being necessary or appropriate for the purposes of the HCP.

Applicant’s Proposal

In accordance with the requirements of the ESA, ODSL is requesting authorization of incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*), threatened marbled murrelet (*Brachyramphus marmoratus*), and threatened Oregon Coast coho salmon (*Oncorhynchus kisutch*) (together, the covered species), each of which is known to occur in the Elliott State Forest. Incidental take permits for the northern spotted owl and marbled murrelet fall under the jurisdiction of FWS; incidental take permits for the Oregon Coast coho salmon fall under the jurisdiction of NMFS.

ODSL is seeking incidental take coverage for a variety of research and management activities on the Elliott State Forest, located in Coos and Douglas Counties

in southwestern Oregon. The proposed covered activities include forest research treatments, timber removal, forest and species research projects, supporting management activities, supporting infrastructure management, and activities identified in the conservation strategy and monitoring program that may result in effects on covered species. These activities are described further in the draft HCP and in the DEIS. The proposed permit term is 80 years.

The draft HCP and DEIS include analyses of projected impacts to covered species. ODSL anticipates that take of northern spotted owl or murrelets is likely to occur as a result of habitat loss and modification. For this reason, and because it is not practical to detect take of individual northern spotted owls or marbled murrelets, ODSL has established modeled habitat units as a surrogate for use in take estimates. Similarly, to estimate take for Oregon Coast coho salmon, ODSL established surrogate habitat units based on the proportion of each independent population within the permit area and the acres of projected harvest levels within the watersheds that overlap with each evolutionarily significant unit. More details regarding ODSL's methodology for estimating and quantifying take and related conservation outcomes over time can be found in the draft HCP.

Measures to minimize and mitigate impacts on covered species are described in the draft HCP for each species as conservation measures and conditions on covered activities, guided by goals and objectives in the conservation strategy of the HCP. ODSL would monitor implementation of these measures for compliance and effectiveness. Minimization and mitigation measures are subject to adaptive management to ensure their effectiveness, and to ensure achievement of the ESRF HCP's biological goals and objectives.

The ESRF HCP includes funding information and assurances, monitoring requirements, adaptive management, and provisions for changed and unforeseen

circumstances to help ensure conservation outcomes for the covered species over the permit term. Annual reports to the Services would confirm the amount, type, and location of impacts and mitigation, as well as the status of monitoring, adaptive management, changed circumstances, and funding.

National Environmental Policy Act Compliance

Draft Environmental Impact Statement

The FWS, with input from NMFS as a cooperating agency, prepared a draft environmental impact statement (DEIS) to evaluate the impacts of the proposed ITP action on the human environment, consistent with the purpose and goals of NEPA (42 U.S.C. 4321 *et seq.*). This DEIS was prepared pursuant to the Council on Environmental Quality's implementing NEPA regulations at 40 CFR Parts 1500-1508, which became effective on May 20, 2022 (April 20, 2022, 87 FR 23453). The DEIS analyzes the proposed action and a reasonable range of alternatives to the proposed action. The environmental consequences of each alternative, including the direct, indirect, and cumulative effects, were analyzed to determine if significant impacts to the human environment would occur. Four alternatives are analyzed in detail in the DEIS.

Alternative 1 – No-Action Alternative: The Services would not issue incidental take authorizations to ODSL, and ODSL would not implement the HCP. ODSL's mandate to manage lands under its jurisdiction with the objective of obtaining the greatest benefit for the people of the State, consistent with the conservation of the resource under sound techniques of land management, would remain in place, and ODSL would continue to be subject to the ESA as well as other Federal, State, and local requirements for any forest management activities in the Elliott State Forest. The No Action alternative assumes that ODSL would manage the Elliott State Forest for timber harvest using a take avoidance approach to ESA compliance.

Alternative 2 – Proposed Action: The Services would, in accordance with

applicable law, issue the requested ITPs to ODSL for the incidental take of covered species from covered activities in the permit area and implementation of the conservation strategy for a term of 80 years. ODSL would implement the ESRF HCP and its conservation strategy, including conditions on covered activities, mitigation measures to offset the impacts of the taking on covered species, and monitoring and reporting requirements. ODSL would provide funding for HCP implementation.

Alternative 3 – Increased Conservation: The Services would, in accordance with applicable law, issue ITPs to ODSL with the same permit area, permit term, covered species, and monitoring and adaptive management program as the proposed action. The HCP's covered activities and conservation strategy would be modified to allocate additional covered species' habitat and forest stands of a certain age (>80 years) to reserves; expand protected riparian areas around certain categories of streams, prohibit harvest activities such as restoration thinning on steep slopes and in stands of a certain age (>65 years), and implement additional conditions for permanent new road miles and vacated roads.

Alternative 4 – Increased Harvest: The Services would issue ITPs to ODSL with the same permit area, covered activities, covered species, permit term, and monitoring and adaptive management program as the proposed action. The HCP's research design would be modified to eliminate reserve areas located outside of occupied and modeled potential marbled murrelet habitat. In these areas, intensive and extensive prescriptions would be applied to stands under 65 years of age as of 2020 and over 65 years of age as of 2020, respectively. Protected riparian areas would be reduced around certain categories of streams and on the Lower Millicoma River. Under this alternative, the requirement for no net increase in permanent road miles in certain conservation areas would not apply.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the Clean Air Act with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions. Under the CEQ NEPA regulations, EPA is also responsible for administering the EIS filing process. EPA is publishing a notice in the *Federal Register* announcing this DEIS. The publication date of EPA's notice of availability is the official beginning of the public comment period. EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

Public Comments and Virtual Public Meeting

Submitting Comments

You may submit your comments and materials on the draft HCP and the DEIS by one of the methods in **ADDRESSES**. We specifically request information on the following:

1. Biological information, analysis, and relevant data concerning the covered species, other wildlife, and ecosystems.
2. Potential effects that the proposed permit actions could have on the covered species, and other endangered or threatened species, and their habitats, including the interaction of the effects of the project with climate change and other stressors.
3. Adequacy of the proposed actions to minimize and mitigate the impact of the taking on covered species, including but not limited to conservation measures, conditions on covered activities, and adaptive management procedures.
4. Potential effects that the proposed permit action could have on other aspects of the human environment, including effects on plants and

animals, water resources, and aesthetic, historic, cultural, economic, social, environmental justice, climate change, or health effects.

5. The alternatives analysis conducted by FWS, including the alternatives analyzed, the range of alternatives analyzed, and the alternatives considered but not analyzed in detail.
6. The presence of historic properties—including archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns—in the proposed permit area, which are required to be considered in project planning by the National Historic Preservation Act.
7. Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions, as well as any connected actions that are closely related and should be discussed in the same DEIS.
8. The alternatives, information, and analyses submitted during the public scoping period and the summary thereof.
9. Other information relevant to the ESRF HCP and its impacts on the human environment.

Virtual Public Meeting

To provide for the wide attendance of interested parties and help protect the public from potential spread of the COVID-19 virus, a virtual public meeting will be conducted. See **DATES** and **ADDRESSES** for the date and time of the virtual public meeting. During the virtual public meeting, ODSL and the Services will present information pertinent to the ESRF HCP and give the public the opportunity to ask questions about the draft HCP and DEIS. Oral comments will not be accepted during the meeting; written comments may be submitted by the methods listed in **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations in order to participate in the public meeting should contact the Service's Oregon Fish and Wildlife Office as soon as possible, using one of the methods listed in **ADDRESSES**. In order to allow sufficient time to process requests, please make contact at least 15 days before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and materials we receive, as well as references for supporting documentation we used in preparing the DEIS, will be available for public inspection online in Docket No. FWS-R1-ES-2022-0029 at <https://www.regulations.gov/> (see **FOR FURTHER INFORMATION CONTACT**).

Next Steps and Decision to Be Made

After public review and comment, the Services will evaluate the respective permit applications, associated documents, and any comments received, to determine whether the permit applications meet the requirements of section 10(a)(1)(B) of the ESA. The decisions will also be informed by the data, analyses, and findings in the EIS and public

comments received on the Draft EIS and HCP. The Services will each document their determinations independently in an ESA section 10 findings document, ESA section 7 biological opinion, and a NEPA record of decision developed at the conclusion of the ESA and NEPA compliance processes. FWS expects to submit a Final EIS for publication in the Federal Register by June 2023. At least 30 days after the FEIS is published, we expect that the Services will complete records of decision on the requested ITPs in accordance with applicable timeframes established in 40 CFR 1506.11, and that the Services will issue decisions on the requested ITPs. The current estimate for the issuance of records of decision is August 2023.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1539(c)) and NEPA and its implementing regulations (40 CFR 1503.1 and 1506.6).

Nanette Seto,
Acting Deputy Regional Director,
U.S. Fish and Wildlife Service.

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